

Congress of the United States
Washington, DC 20515

August 21, 2002

The Honorable W.J. "Billy" Tauzin, Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Tauzin,

We've received your July 26th response to our May 8th request for an Energy and Commerce Committee investigation of the business conduct of energy suppliers - one of six letters we have sent to you on this matter since February.

Regrettably, we must express our deep concern because it appears that you are preparing to act unilaterally on energy legislation without completing an investigation of our energy markets or consulting the rest of the Committee.

To its credit, the Committee has "gotten tough" with many corporate bad apples...issuing subpoenas and compelling senior corporate officers to testify. The Committee has worked well on these matters because we have worked on a bipartisan basis to hold these companies accountable. Unfortunately, the Majority has been reluctant to investigate energy companies with equal vigor. Meanwhile our energy markets have been falling into disarray because of the doubts surrounding the business practices of these companies. Only this Committee can help set things right.

You write that "the Committee is, and has been for several years, actively investigating the California energy crisis," but as members of the Committee, we find little evidence of a serious investigation. As Californians, we have an obvious interest in examining the business practices of energy suppliers. Our six months of correspondence demonstrate that we would welcome the opportunity to participate in an active investigation, but we've never been invited to do so.

Earlier this year the Committee spent considerable time investigating Enron's corrupt accounting practices. The inquiry shed more light on the accounting firm of Arthur Andersen than on Enron itself, and the hearings never explored Enron's unethical energy transactions in depth. The hearings also ended in March, nearly two months before the Enron "smoking gun" memos were made public on May 6, 2002. As you know, the "smoking gun" memos describe in Enron's own words the questionable and probably illegal transactions the company used to manipulate the market and gouge Western consumers. Without a public inquiry into the memos and the activities they describe, the Committee's record on the Enron matter can hardly be called complete.

The problems in our energy markets do not end with Enron. Subsequent to the revelation of the "smoking gun" memos, other energy companies admitted that they engaged in some of the same unethical energy trading practices. Some admissions were reportedly made in documents

submitted to the Federal Energy Regulatory Commission (FERC) during its investigation of manipulation in the Western energy market. You note in your letter that you have obtained these documents, including confidential submissions, from FERC. Unfortunately, the documents have not been made available to our staffs or us, although we requested access on July 25, 2002. While Committee staff has had access to the documents, we understand that they are not at liberty to reveal their contents. We hope that you will make these documents available to all Committee members and staff immediately.

In our previous letters we identified information within the public domain that describes widespread malfeasance in the energy industry. We understand from news reports that there are ongoing Securities and Exchange Commission, Department of Justice, and Commodity Futures Trading Commission inquiries into the conduct of many energy companies. The Committee should be following these reports and investigations, synthesizing the information, and making it public whenever appropriate. It is in the interest of consumers and investors to have this information aired. Indeed, a public inquiry that brings to light all of the misbehavior of individual malefactors will help to restore confidence in the industry as a whole.

As evidence of the Committee's commitment to fixing our energy markets, you mention the Committee's work last year to respond to the Western energy crisis. While the Committee spent considerable time debating the crisis, it failed to address the fundamental flaws in the marketplace. Our concerns about malfeasance in the market were routinely discounted during the hearings, but time has proved their validity. When the Committee had the chance to act in the interest of consumers, the process was short-circuited. After the Subcommittee on Energy and Air Quality held a successful markup of the *Electric Emergency Act*, the full Committee markup was cancelled when members seemed ready to approve our plan to provide price relief to Western consumers. In this context, you'll understand why we remain skeptical.

You also write that "the Committee is...considering legislative reforms to ensure that electricity customers nationwide are protected..." and that as chairman of the Conference on H.R. 4 you intend to "move quickly to prohibit market manipulation by energy companies." We appreciate your forwarding a copy of Representative Barton's proposal to enhance market transparency, increase criminal penalties, and ban certain unethical energy transactions. The fact remains, however, that the full Committee has not held legislative hearings on electricity legislation this year. Without a record, much less a definitive Committee or House position on electricity, it's not appropriate to consider the issue in Conference.

Additionally, we must question whether the Committee has sufficient knowledge to make an informed decision about electricity legislation. As you write, "[u]nderstanding the circumstances and regulatory structures that gave rise to the power shortages and price spikes of 2000 and 2001, as well as the behavior of specific market participants, is critical to preventing similar occurrences in the future." With Committee staff still conducting an in-camera review of important industry documents, no one can claim to have an adequate understanding of the flaws in our energy markets.

Mr. Chairman, last year, the Committee failed to adequately address corporate misbehavior in our energy markets to the detriment of consumers and the companies themselves. Once again,

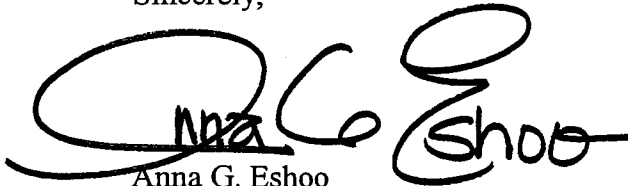
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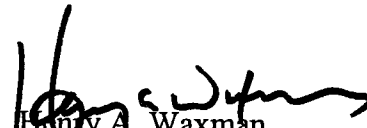
we fear that political expedience is taking precedence over the public interest. We cannot afford to take that approach again. We wish to work with you and are prepared to assist you in a substantive investigation and in hearings on corporate misbehavior in our energy markets with an eye toward producing legislative remedies. Surely our constituents deserve nothing less.

We ask for your prompt reply to this and our other letters. In the interim, we ask you to give our staffs access to the documents that the Committee obtained from FERC.

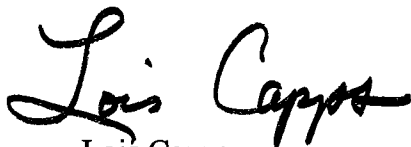
Sincerely,



Anna G. Eshoo
Member of Congress



Henry A. Waxman
Member of Congress



Lois Capps
Member of Congress



Jane Harman
Member of Congress

cc: Hon. John D. Dingell, Ranking Member
Committee on Energy and Commerce

Hon. Joe Barton, Chairman
Subcommittee on Energy and Air Quality

Hon. Rick Boucher, Ranking Member
Subcommittee on Energy and Air Quality